

PATENT APPLICATION NO. 10/024,346
ATTORNEY DOCKET NO. 46417.001018

REMARKS

A. Introduction

The Office Action has been received and carefully considered. Claims 1-32 are pending in the application of which claims 18-28 are withdrawn from consideration. By this amendment claim 1 is amended, claims 29-32 are added, and the specification and drawings are amended. No new matter is added by this Amendment. Support for the amendments may be found in the specification in paragraphs [0044], [0045], [0046], [0061] and in the drawings, for example. Applicant believes that the application is now in condition for allowance and notice thereof is respectfully requested.

B. The Election of Species

In accordance with paragraph 2 of the Office Action, Applicant hereby affirms the election made without traverse by Mr. Kevin Duncan on May 21, 2003 to prosecute the invention of Figs. 1-11, claims 1-17 and note that claims 18-28 have been withdrawn from consideration.

C. The Drawings

In paragraph 4, the Office Action objects to the drawings asserting a minor deficiency. The drawings have been amended in response to the asserted deficiency to add reference numeral "15". Accordingly, it is respectfully submitted that the drawings satisfy all formal requirements.

D. The Disclosure

In paragraphs 5 and 6, the Office Action objects to the disclosure asserting various minor deficiencies. The specification has been amended in response to the asserted deficiencies.

Accordingly, it is respectfully submitted that the specification now satisfies all formal requirements.

E. The Rejection of claims 1-6, 9-15, 16/13, 16/15, 17/13 and 17/15

The Office Action rejects claims 1-6, 9-15, 16/13, 16/15, 17/13 and 17/15 under 35 U.S.C. §103 as being unpatentable over U.S. Patent 4,703,879 to Kastendieck in view of U.S. Patent 2,616,081 to Weaver. This rejection is respectfully traversed as it pertains to amended claim 1.

Claim 1 recites a headmount apparatus to be worn by a subject and for mounting and supporting vision enhancement equipment, the headmount apparatus comprising a mounting shell having at least one pad configured to engage the head of the subject and having at least one mounting surface to which the vision enhancing equipment is mounted, the mounting shell being further configured to be substantially open at the top and rear of the subject's head when worn, at least a portion of the pad adapted to contact the cheek area of the subject when worn; at least one elastic strap attached to the mounting shell for securing the mounting shell to the user's head; and the at least one elastic strap further includes at least one side strap positioned on one side of the user's head, the side strap beginning at the mounting shell, passing through an occipital assembly, and ending at the mounting shell on the one side.

Kastendieck is directed to night vision goggle headgear. Kastendieck describes that Fig. 1 shows headgear 10, which is mounted to the cranium of a wearer so that a night vision goggle 12, fixed to the headgear 10, is held in the wearer's line of sight. With this arrangement, the person wearing the headgear 10 can view objects in the darkness through the goggle 12, and yet have both hands free for other uses. In column 3, lines 24-39, Kastendieck further describes that the night vision goggle headgear 10 includes a cranial frame 16 comprising a temporal strip 18

and integral crown strip 20. The cranial frame 16 fits over the upper part of the cranium 22. Temporal strip 18 terminates at ends 24 and 26, thereby partially circumscribing the crown of the cranium 22. Kastendieck further teaches that various structural elements of the invention are formed in pairs, such as temporal strip ends 24 and 26.

In column 3, lines 40-56, Kastendieck further teaches that a crown strip 20 includes a compound curvature at its base for conforming to the cranium. The crown strip 20 extends backwardly over the top of the cranium 22 and branches out into ends 28 and 30. The temporal strip ends 24 and 26 are each double slotted 32 and 34, one slot thereof for anchoring each end of a posterior girth strap 36. Kastendieck describes that in an intermediate position on the posterior girth strap 36 is a webbed pad 38 for engaging the lower edge of the cranial occipital protuberance 40. The occipital protuberance 40 is located at the anterior lowermost part of the cranium 22, the bottom lateral edge of which is disposed substantially in the center of the webbed pad 38, as shown in FIG. 1 of Kastendieck. The branched ends 28 and 30 of the crown strip 20 include slots 42 and 44, each for anchoring an adjustable radial strap 46 and 48 to respective slots in the temporal strip ends 24 and 26.

In column 7, lines 6-21, Kastendieck further describes that the circumferential temporal size of the headgear frame 16 can be adjusted by a posterior girth strap 142, shown buckled in FIG. 4 and unbuckled in FIG. 5. Girth strap 142 is threaded through temporal strip end slots 144 and 146. Kastendieck further teaches the girth strap 142 can thereby be cinched to adjust the fit of the cranial frame 16 as desired, and held fastened by the engagement of the strap end 148 with buckle 150. The webbed occipital pad 152 is maintained adjacent the occipital protuberance of the wearer's cranium 22 by the posterior girth strap 142 held in engagement with the occipital

pad 152 by a loop 154. Loop 154 is sewn to the occipital pad 152, and the posterior girth strap 142 threaded through the loop 154 during initial fitting of the headgear to one's head.

However, it is respectfully submitted that Kastendieck fails to teach or suggest the features of claim 1. In particular, claim 1 recites the at least one elastic strap further includes at least one side strap positioned on one side of the user's head, the side strap beginning at the mounting shell, passing through an occipital assembly, and ending at the mounting shell. For example, Fig. 3 of the present invention shows one embodiment of the invention of claim 1.

Kastendieck fails to teach such specifics as recited in claim 1. Instead, for example, Kastendieck teaches the arrangement of Fig. 1 of Kastendieck and in particular the strap 36. Alternatively, Kastendieck teaches a girth strap 142, as shown in Fig. 5. However, Kastendieck fails to teach or suggest the claimed interrelationship between the side strap, the mounting shell, and the occipital assembly, for example, as recited in claim 1.

The Office Action relies upon Weaver to teach the use of elastic straps in the alternative to adjustable straps. Specifically, the Office Action asserts that in Kastendieck the mounting shell 16 is interiorly padded at the cheek area 52 (see Figure 3) and attached by straps 36, 46, 48. The Office Action asserts that Kastendieck does not teach the use of an elastic strap, but that Weaver teaches old the use of elastic straps in alternative to adjustable straps for likewise accommodating different head sizes (see column 3, lines 34-39). The Office Action further asserts that it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the elastic straps of Weaver for those of Kastendieck to achieve the advantage of an alternative means of accommodating different head sizes.

It is submitted that even if it were obvious to somehow use the elastic straps of Weaver in the arrangement of Kastendieck, such combination would still fail to teach or suggest the

features of claim 1. In particular, claim 1 recites the at least one elastic strap further includes at least one side strap positioned on one side of the user's head, the side strap beginning at the mounting shell, passing through an occipital assembly, and ending at the mounting shell on the one side. Applicant submits that Kastendieck fails to teach such an arrangement. Further, the modification of Kastendieck as proposed in the Office Action fails to cure the deficiencies of Kastendieck.

For the reasons set forth above and below, it is respectfully submitted that claim 1 defines patentable subject matter. Further, the corresponding dependent claims also define patentable subject matter for the reasons set forth herein with respect to claim 1, as well as for the additional features set forth in the dependent claims.

For example, claim 32 has been added to further define the features of claim 14. Claims 32 recites wherein the mounting shell includes contours that demarcate the at least one eyewear bridge. The bridge between 52 and 18 of Kastendieck, as asserted in the Office Action, fails to teach such claimed feature as recited in claim 32. Claims 29-31 are added to recite further features. Withdrawal of the rejection under 35 U.S.C. §102(b) is respectfully requested.

F. The Rejection of claim 7

The Office Action rejects claim 7 under 35 U.S.C. §103 as being unparentable over Kastendieck in view of Weaver and further in view of U.S. Patent 6,467,099 to Dennis. This rejection is respectfully traversed.

The Office Action asserts that Dennis teaches old the use of a moisture wicking covering 20 for a head engaging pad; and that it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the pad of Kastendieck with the moisture wicking

covering 20 of Dennis to achieve the advantage of controlling perspiration between the user and the pad.

Accordingly, the Office Action relies upon the teachings of Dennis for a moisture wicking covering. However, it is respectfully submitted that even if it were obvious to somehow modify the teachings of Kastendieck and Weaver with Dennis, the applied art would still fail to teach the specifics of claim 1. Accordingly, Applicant submits that Dennis fails to cure the deficiencies of Kastendieck and Weaver, as described above.

Claim 7 depends from claim 1 and thus defines patentable subject matter for at least the reasons set forth herein with respect to claim 1, as well as for the additional features claim 7 recites. Withdrawal of the rejection under 35 U.S.C. §103 is respectfully requested.

G. The Rejection of claims 8, 16/8 and 17/8

The Office Action rejects claims 8, 16/8 and 17/8 under 35 U.S.C. §103 as being unpatentable over Kastendieck in view of Weaver and further in view of U.S. Patent 2,785,404 to Strohm. This rejection is respectfully traversed.

The Office Action asserts that Strohm teaches that the use of a rot inhibitor or vinyl finish on a pad for engaging a head is old in the art (see column 4, lines 20-30); and that it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the padding of Kastendieck with the vinyl finish of Strohm to achieve the advantage of inhibiting rot of the padding.

Accordingly, the Office Action relies upon the teachings of Strohm for a rot inhibitor or vinyl finish. However, it is respectfully submitted that even if it were obvious to somehow modify the teachings of Kastendieck and Weaver with Strohm, the applied art would still fail to

teach the specifics of claim 1. Accordingly, Applicant submits that Strohm fails to cure the deficiencies of Kastendieck and Weaver, as described above.

Claims 8, 16/8 and 17/8 depend from claim 1 and thus define patentable subject matter for at least the reasons set forth herein with respect to claim 1, as well as for the additional features such dependent claims recite. Withdrawal of the rejection under 35 U.S.C. §103 is respectfully requested.

H. The Obviousness-type Double Patenting Rejection of claims 1-17

The Office Action rejects claims 1-17 under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-21 of copending U.S. Application No. 10/024,650 in view of Kastendieck and Weaver. This rejection is respectfully traversed as it pertains to the amended claims.

As discussed, above, claim 1 recites at least one elastic strap attached to the mounting shell for securing the mounting shell to the user's head; and the at least one elastic strap further includes at least one side strap positioned on one side of the user's head, the side strap beginning at the mounting shell, passing through an occipital assembly, and ending at the mounting shell on the one side. The claims of the 650 application fail to teach or suggest the particular arrangement as is now recited in claim 1.

The Office Action proposes to combine the teachings of the claims of the 650 application with the teachings of Kastendieck and Weaver. In particular, the Office Action relies upon Kastendieck for the teachings of a pad contacting the cheek, and Weaver for the teachings of elastic straps. However, Applicant submits that even if it were obvious to somehow so modify the claims of the 650 application, such combination would still fail to teach or suggest the

features of claim 1 of the present application, i.e., so as to teach or suggest the particular arrangement of claim 1.

For the reasons above, Applicant traverses the rejection under obviousness-type double patenting. Applicant respectfully requests withdrawal of the rejection under obviousness-type double patenting.

I. Conclusion

For at least the reasons provided above, Applicant respectfully submits that the application is in condition for allowance. Favorable reconsideration and allowance of the pending claims are respectfully solicited. Should there be anything further required to place the application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,
HUNTON & WILLIAMS LLP

Dated: September 30, 2003

By: 

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Attachment: (1) Replacement Sheet

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